

IOWA ETHICS AND CAMPAIGN DISCLOSURE BOARD

IN THE MATTER OF:

Case No. 2012 IECDB 16

Mitchell County Board of
Supervisors

DISMISSAL

On this 16th day of November, 2012, a complaint filed against the Mitchell County Board of Supervisors came before the Iowa Ethics and Campaign Disclosure Board. For the reasons that follow, the Ethics Board hereby dismisses the complaint.

BACKGROUND

On October 22, 2012, Betty McCarthy filed a complaint against the Mitchell County Board of Supervisors alleging the Board violated Iowa Code sections 68A.405 and 68A.505 when it used county funds to pay for newspaper advertisements explaining an upcoming bond issue. The complainant also expressed concern that county resources may have been used to produce a DVD showing problems with the courthouse. The bond issue was whether to approve the sale of \$6.5 million in bonds to demolish the current Mitchell County courthouse and build a new one.

The complainant attached copies of the newspaper advertisements to the complaint. The Ethics Board's Director obtained a copy of the DVD from the Mitchell County Attorney and reviewed it.

ANALYSIS

The Ethics Board must first determine whether the complaint is legally sufficient. A legally sufficient complaint must allege all of the following:

- a. Facts that would establish a violation of a provision of chapter 68A, chapter 68B, section 8.7, or rules adopted by the Ethics Board.
- b. Facts that would establish that the conduct providing the basis for the complaint occurred within three years of the complaint.
- c. Facts that would establish that the subject of the complaint is a party subject to the jurisdiction of the board.

Iowa Code § 68B.32B(4). If the Ethics Board determines the complaint is legally sufficient, it shall order an investigation. *Id.* § 68B.32B(6). If the Ethics Board determines none of the allegations contained in the complaint are legally sufficient, the complaint shall be dismissed. *Id.*

The complaint alleges conduct that occurred this year. The Mitchell County Board of Supervisors is subject to the Ethics Board's jurisdiction because the Ethics Board has the authority to review complaints against any person alleged to have violated a provision of Chapter 68A of the Iowa Code. *Id.* § 68B.32B(1). The only remaining question is whether the complaint alleges facts that would establish a violation of chapter 68A.

Iowa Code section 68A.505 prohibits the use of public resources for political purposes. "Public resources" is broadly defined to mean "the moneys, time, property facilities, equipment, and supplies of the executive branch of state government, a county, city, public school, or other political subdivision." Iowa Admin. Code r. 351—5.3. "Political purposes" means "express advocacy of a candidate or ballot issue." Iowa Code § 68A.102(19). "Express advocacy" means a campaign contribution or a communication that contains "explicit words that unambiguously indicate the communication is recommending or supporting a particular outcome in the election with regard to any clearly identified candidate or ballot issue." *Id.* § 68A.102(14). "Public resources may be used to produce and distribute communications that do not expressly advocate for or against a candidate or that do not expressly advocate for or against a ballot issue." Iowa Admin. r. 351—5.5(5).

Iowa Code section 68A.405 requires an attribution statement (i.e. a "paid for by") on published material—including newspaper advertising—that expressly advocates in favor or against a candidate or ballot issue.

The Ethics Board finds the advertisements paid for by Mitchell County did not expressly advocate in favor or against the bond issue. The advertisements did not recommend or support a particular outcome in the election. Rather, the advertisements simply explained what would happen if the voters approved or rejected the bond issue. Therefore, because the advertisements did not contain express advocacy, the Mitchell County Board of Supervisors did not violate section 68A.505 by authorizing the expenditure of county funds to pay for the advertisements.


The Ethics Board further finds the DVD did not expressly advocate in favor or against the bond issue. It did not recommend or support a particular outcome in the election. Instead, the DVD simply showed viewers the

structural problems with the courthouse, many of which are not visible from the public areas. Therefore, because the DVD did not contain express advocacy, Mitchell County Board of Supervisors did not violate section 68A.505 by authorizing one or more county employees to participate in the production and distribution of the DVD.

Because the Ethics Board finds the newspaper advertisements in question did not contain express advocacy, an attribution statement was not required on the advertisements. Therefore, the Mitchell County Board of Supervisors did not violate section 68A.405 when it placed advertisements in newspapers without attribution statements.

In summary, the Ethics Board finds the complaint failed to allege facts that would establish a violation of a provision of chapter 68A. Consequently, the Ethics Board finds the complaint is not legally sufficient. The complaint is hereby dismissed.

By direction of the Ethics Board



James Albert, Chair
John Walsh, Vice Chair
Saima Zafar
Carole Tillotson
Jonathan Roos
Mary Rueter

CERTIFICATE OF SERVICE

The undersigned hereby certifies this order was sent by first class mail, address service requested, on November 28, 2012, to:

Mitchell County Attorney Mark L. Walk
515 State Street
Osage, Iowa 50461

Friends of the Mitchell County Courthouse
1117 Chestnut Street
Osage, Iowa 50461

By: Megan Tooker
Megan Tooker, Executive Director for the Board